

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 40 / 2010

Thursday, this the 4th day of November, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

M.S.Rosamma,
Retired Chief Section Officer,
Bharat Sanchar Nigam Ltd.
Residing at Kunnumpurathu House,
Thodupuzha East.P.O.
Thodupuzha-689 585,
Idukki District.Applicant

(By Advocate Mr C.Rajendran)

v.

1. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Kerala Circle,
Thiruvananthapuram.
2. The General Manager,
O/o the Principal General Manager,
Ernakulam Telecom District,
Bharat Sanchar Nigam Ltd., Kochi-31.
3. The Deputy General Manager (Administration),
O/o the Principal General Manager,
Ernakulam Telecom District,
Bharat Sanchar Nigam Ltd., Kochi-31.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 29.10.2010, the Tribunal on 4.11.2010 delivered the following:

ORDER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

After prolonged legal adventures it transpires that the applicant and one Shri O.Madhavan who was apparently her immediate junior at the time of appointment even though made on the same date of 14.12.1965 because of her



seniority in age would claim that Madhavan became her immediate junior. But it appears that applicant applied for a transfer to Kottayam under Rule 38 of P&T Manual after giving a declaration to the effect that she will lose her seniority. Accordingly she was transferred with effect from 4.7.1976 losing her original seniority. She thereby was given the seniority position of the incumbent who was earlier holding the post at Kottayam. Thereafter it would appear that she was again transferred under Rule 38 on mutual transfer with Shri Raju V Easo of lower rank to Ernakulam DET on 10.3.1975 and thereby she got the seniority position of 19 of Raju V Easo as per the Divisional Gradation list of Permanent T.S. Clerk as on 1.7.1976. But it appears that Shri Madhavan came directly to Telegraph Store Depot under DEP, Ernakulam on mutual transfer, again under Rule 38 with Shri V.V.Joseph on 8.12.1967 and he got the seniority position of Shri V.V.Joseph. On merger of these divisions, the seniority position of Shri O.Madhavan became No.4 and the seniority position of the applicant became 8. It was also submitted at the bar that the seniority position as on 1.1.1991 was published vide Annexure R-2 seniority list which shows that applicant is junior to Shri O.Madhavan and Annexure R-2 was widely circulated among the staff and the applicant at no point of time had made any representation against any of the seniority position as evidenced by Annexure R-2 and thereby, the respondents would claim that by operation of the sit back rule enunciated by the Hon'ble Apex Court, applicant cannot now turn back and question the validity of Annexure R-2 even if she has any just cause for it. But in the instant case, respondent would claim that even that cause is absent in the case of the applicant.

2. Respondents would also claim that the date of substantive entry is one of the main consideration for the preparation of gradation list and substantive entries are regulated by availability of permanent post at that place. They would say that Shri O Madhavan was appointed substantively as TS Clerk against the

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available post of T.S.Clerk in the Telegraph Store Depot ENK with effect from 8.12.1967 as per AE Stores ENK order dated 20.10.1973 whereas the applicant was substantively entered as T.S.Clerk with effect from 1.3.1968 vide DET KM No.E.187/163 dated 16.8.1968 against one of the seven posts of T.S.Clerk made permanent vide PMG TV No.ES 74/5 dated 5.7.1968.

3. Following the Apex Court judgment and the DoPT circular which was upheld by the Principal Bench of the Central Administrative Tribunal at New Delhi and other Benches all over India, it was stipulated that the procedure for promotion to Grade-IV under BCR scheme was to be strictly regulated and based on seniority in the basic cadres subject to fulfillment of other conditions of BCR and it was decided that the promotion to the said post must be given from amongst officials in Grade.III on the basis of seniority in the basic grade and subject to the determination of fitness by DPC.

4. But the applicant would claim that her seniority has to be counted from the date of initial appointment i.e. 14.12.1965 and even if she had lost the seniority on a cumulative assessment of seniority it has to be given back to her from 30.11.1990 onwards. It must be notionally given to her on the basis that had her seniority been or intact, then she would have been notionally promoted against the available vacancies earlier also since she being a SC candidate would have been entitled to accelerated promotional avenues. Therefore, she would claim that she had the right to be promoted on 30.11.1990 and would have been given the promotion to Grade-IV when vacancies arose in 1996 and subsequently in July 1998. She would say that the respondents had not followed the correct seniority list and they had created seniority according to their whims and fancies. She would say that the roster level promotion created to SC/ST candidates would appear to be denied to her as this can only be taken for her grade



promotion and since she is elder in age, she is entitled to the promotion prior to the promotion of Shri O Madhavan. She would contest the substantive entry of Shri O Madhavan and would say that it has no bearing and even Annexure A-3 has no bearing so far as promotion of the applicant is concerned. But the respondents would point out that she had not answered anything contrary to what is stated in the reply in relation to her losing her seniority on her voluntarily sought transfer twice. It appears to be correct. Other than bald contention that her seniority must be reckoned from the earlier and initial appointment she has no answer. The respondents would say that at the relevant time SC/ST was over represented and hence no roster vacancy available to her.

5. The applicant would rely on the High Court judgment wherein the High Court had directed effective consideration by the respondents and had disposed of Contempt Petition reserving her right to challenge the decision. We have carefully gone through the pleadings and documents and found that the applicant has lost her seniority as against Shri O Madhavan on her seeking a transfer voluntarily under Rule 38 and therefore, lost position cannot be regained at a later stage. Therefore her request for granting her promotion as Chief Section Supervisor Gr.IV from 1.7.1998 on the date on which Shri O Madhavan was promoted cannot be granted to her as we have already held that she had lost her seniority because of her voluntary transfer. There is no merit in the application and it is dismissed, without any order as to costs.



DR K.B.SURESH
JUDICIAL MEMBER



K NOORJEHAN
ADMINISTRATIVE MEMBER